

## Thomas Jefferson to George Hay, May 20, 1807, The Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.

TO THE UNITED STATES DISTRICT ATTORNEY FOR VIRGINIA<sup>1</sup> J. MSS. (GEORGE HAY.)

<sup>1</sup> For convenience, all the letters written by Jefferson to Hay during the Burr trial follow:

“ Washington, May 26, 07.

“ Dear Sir,—We are at this moment informed by a person who left Richmond since the 22d, that the prosecution of Burr had begun under very inauspicious symptoms by the challenging & rejecting two members of the Grand Jury, as far above all exception as any two persons in the U. S. I suppose our informant is inaccurate in his terms, and has mistaken an objection by the criminal & voluntary retirement of the gentlemen with the permission of the court, for a challenge & rejection, which, in the case of a Grand Jury is impossible. Be this as it may, and the result before the formal tribunal, fair or false, it becomes our duty to provide that full testimony shall be laid before the Legislature, & through them the public. For this purpose, it is necessary that we be furnished with the testimony of every person who shall be with you as a witness. If the Grand Jury find a bill, the evidence given in court, taken as verbatim as possible, will be what we desire. If there be no bill, & consequently no examination before court, then I must beseech you to have every man privately examined by way of affidavit, and to furnish me with the whole testimony. In the former case, the person taking down the testimony as orally delivered in court, should make oath that he believes it to be substantially correct. In the latter case, the certificate of the magistrate administering the oath, and signature of the party, will be proper; and this should be done before they receive their compensation, that they may

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not evade examination. Go into any expense necessary for this purpose, & meet it from the funds provided by the Attorney general for the other expenses. He is not here, or this request would have gone from him directly. I salute you with friendship & respect.”

“ Washington, May 28, 07.

“ Dear Sir,—I have this moment recd. your letter of the 25th, and hasten to answer it. If the grand jury do not find a bill against Burr, as there will be no examination before a petty jury, Bollman's pardon need not in that case to be delivered; but if a bill be found, and a trial had, his evidence is deemed entirely essential, & in that case his pardon is to be produced before he goes to the book. In my letter of the day before yesterday, I enclosed you Bollman's written communication to me, & observed you might go so far, if he prevaricated, as to ask him whether he did not say so & so to Mr. Madison and myself. On further reflection I think you may go farther, if he prevaricates grossly, & shew the paper to him, and ask if it is not his handwriting, & confront him by its contents. I enclose you some other letters of Bollman to me on former occasions, to prove by similitude of hand that the paper I enclosed on the 26th was of his handwriting. I salute you with esteem & respect.”

“ Washington, June 2, 07.

“ Dear Sir,—While Burr's case is depending before the court, I will trouble you, from time to time, with what occurs to me. I observe that the case of *Marbury v. Madison* has been cited, and I think it material to stop at the threshold the citing that case as authority, and to have it denied to be law. 1. Because the judges, in the outset, disclaimed all cognizance of the case, altho' they then went on to say what would have been their opinion, had they had cognizance of it. This, then, was confessedly an extrajudicial opinion, and, as such, of no authority. 2. Because, had it been judicially pronounced, it would have been against law; for to a commission, a deed, a bond, *delivery* is essential to give validity. Until, therefore, the commission is delivered out of the hands of the Executive & his agents, it

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is not his deed. He may withhold or cancel it at pleasure, as he might his private deed in the same situation. The Constitution intended that the three great branches of the government should be co-ordinate, & independent of each other. As to acts, therefore, which are to be done by either, it has given no controul to another branch. A judge, I presume, cannot sit on a bench without a commission, or a record of a commission; & the Constitution having given to the judiciary branch no means of compelling the executive either to *deliver* a commission, or to make a record of it, shews it did not intend to give the judiciary that controul over the executive, but that it should remain in the power of the latter to do it or not. Where different branches have to act in their respective lines, finally & without appeal, under any law, they may give to it different and opposite constructions. Thus, in the case of William Smith, the H of R determined he was a citizen; and in the case of William Duane, (precisely the same in every material circumstance,) the judges determined he was no citizen. In the cases of Callendar & some others, the judges determined the sedition act was valid under the Constitution, and exercised their regular powers of sentencing them to fine & imprisonment. But the executive determined that the sedition act was a nullity under the Constitution, and exercised his regular power of prohibiting the execution of the sentence, or rather of executing the real law, which protected the acts of the defendants. From these different constructions of the same act by different branches, less mischief arises than from giving to any one of them a control over the others. The executive & Senate act on the construction, that until delivery from the executive department, a commission is in their possession, & within their rightful power; and in cases of commissions not revocable at will, where, after the Senate's approbation & the President's signing & sealing, new information of the unfitness of the person has come to hand before the *delivery* of the commission, new nominations have been made & approved, and new commissions have issued.

“On this construction I have hitherto acted; on this I shall ever act, and maintain it with the powers of the government, against any control which may be attempted by the judges, in subversion of the independence of the executive & Senate within their peculiar

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department. I presume, therefore, that in a case where our decision is by the Constitution the supreme one, & that which can be carried into effect, it is the constitutionally authoritative one, and that that by the judges was *coram non judice*, & unauthoritative, because it cannot be carried into effect. I have long wished for a proper occasion to have the gratuitous opinion in *Marbury v. Madison* brought before the public, & denounced as not law; & I think the present a fortunate one, because it occupies such a place in the public attention. I should be glad, therefore, if, in noticing that case, you could take occasion to express the determination of the executive, that the doctrines of that case were given extrajudicially & against law, and that their reverse will be the rule of action with the executive. If this opinion should not be your own, I would wish it to be expressed merely as that of the executive. If it is your own also, you would of course give to the arguments such a development as a case, incidental only, might render proper. I salute you with friendship and respect."

" Washington, June 5, 07.

" Dear Sir,—Your favor of the 31st has been received, and I think it will be fortunate if any circumstance should produce a discharge of the present scanty grand jury, and a future summons of a fuller; tho' the same views of protecting the offender may again reduce the number to 16., in order to lessen the change of getting 12. to concur. It is understood, that wherever Burr met with subjects who did not chuse to embark in his projects, unless approved by their government, he asserted that he had that approbation. Most of them took his word for it, but it is said that with those who would not, the following stratagem was practised. A forged letter, purporting to be from Genl. Dearborne, was made to express his approbation, and to say that I was absent at Monticello, but that there was no doubt that, on my return, my approbation of his enterprises would be given. This letter was spread open on his table, so as to invite the eye of whoever entered his room, and he contrived occasions of sending up into his room those whom he wished to become witnesses of his acting under sanction. By this means he avoided committing himself to any liability to prosecution for forgery, & gave another proof of being a great man in little

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things, while he is really small in great ones. I must add General Dearborne's declaration, that he never wrote a letter to Burr in his life, except that when here, once in a winter, he usually wrote him a billet of invitation to dine. The only object of sending you the enclosed letters is to possess you of the fact, that you may know how to pursue it, if any of your witnesses should know anything of it. My intention in writing to you several times, has been to convey facts or observations occurring in the absence of the Attorney General, and not to make to the dreadful drudgery you are going through the unnecessary addition of writing me letters in answer, which I beg you to relieve yourself from, except when some necessity calls for it. I salute you with friendship & respect."

" Washington, June 12, 07.

" Sir,—Your letter of the 9th is this moment received. Reserving the necessary right of the President of the U S to decide, independently of all other authority, what papers, coming to him as President, the public interests permit to be communicated, & to whom, I assure you of my readiness under that restriction, voluntarily to furnish on all occasions, whatever the purposes of justice may require. But the letter of Genl Wilkinson, of Oct 21, requested for the defence of Colonel Burr, with every other paper relating to the charges against him, which were in my possession when the Attorney General went on to Richmond in March, I then delivered to him; and I have always taken for granted he left the whole with you. If he did, & the bundle retains the order in which I had arranged it, you will readily find the letter desired, under the date of it's receipt, which was Nov 25; but lest the Attorney General should not have left those papers with you, I this day write to him to forward this one by post. An uncertainty whether he is at Philadelphia, Wilmington, or New Castle, may produce delay in his receiving my letter, of which it is proper you should be apprized. But, as I do not recollect the whole contents of that letter, I must beg leave to devolve on you the exercise of that discretion which it would be my right & duty to exercise, by withholding the communication of any parts of the letter, which are not directly material for the purposes of justice.

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“With this application, which is specific, a prompt compliance is practicable. But when the request goes to ‘copies of the orders issued in relation to Cole Burr, to the officers at Orleans, Natchez, &c., by the Secretaries of the War & Navy departments,’ it seems to cover a correspondence of many months, with such a variety of officers, civil & military, all over the U S, as would amount to the laying open the whole executive books. I have desired the Secretary at War to examine his official communications; and on a view of these, we may be able to judge what can & ought to be done, towards a compliance with the request. If the defendant alleges that there was any particular order, which, as a cause, produced any particular act on his part, then he must know what this order was, can specify it, and a prompt answer can be given. If the *object* had been specified, we might then have had some guide for our conjectures, as to what part of the executive records might be useful to him; but, with a perfect willingness to do what is right, we are without the indications which may enable us to do it. If the researches of the Secretary at War should produce anything proper for communication, & pertinent to any point we can conceive in the defence before the court, it shall be forwarded to you.

“I salute you with respect and esteem.”

“Note. On the same day I recd. from the Secr. at War copies of 2 letters to the Govr. of Missipi, & Orleans, which I immediately inclosed to G. Hay.”

“ Washington, June 17, 1807.

“ Sir,—In answering your letter of the 9th, which desired a communication of one to me from Genl Wilkinson, specified by it's date, I informed you in mine of the 12th that I had delivered it, with all other papers respecting the charges against Aaron Burr, to the Attorney Genl, when he went to Richmond; that I had supposed he had left them in your possession, but would immediately write to him, if he had not, to forward that particular letter without delay. I wrote to him accordingly on the same day, but having no answer, I know not whether he has forwarded the letter. I stated in the same letter, that I had desired

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the Secretary at War to examine his office, in order to comply with your further request, to furnish copies of the orders which had been given respecting Aaron Burr and his property; and in a subsequent letter of the same day, I forwarded to you copies of two letters from the Secretary at War, which appeared to be within the description expressed in your letter. The order from the Secretary of the Navy, you said, you were in possession of. The receipt of these papers had, I presume, so far anticipated, and others this day forwarded will have substantially fulfilled the object of a subpoena from the District Court of Richmond, requiring that those officers & myself should attend the Court in Richmond, with the letter of Genl Wilkinson, the answer to that letter, & the orders of the departments of War & the Navy, therein generally described. No answer to Genl Wilkinson's letter, other than a mere acknowledgement of it's receipt, in a letter written for a different purpose, was ever written by myself or any other. To these communications of papers, I will add, that if the defendant supposes there are any facts within the knolege of the Heads of departments, or of myself, which can be useful for his defence, from a desire of doing anything our situation will permit in furtherance of justice, we shall be ready to give him the benefit of it, by way of deposition, through any persons whom the Court shall authorize to take our testimony at this place. I know, indeed, that this cannot be done but by consent of parties; & I therefore authorize you to give consent on the part of the U S. Mr. Burr's consent will be given of course, if he supposes the testimony useful.

“As to our personal attendance at Richmond, I am persuaded the Court is sensible, that paramount duties to the nation at large control the obligation of compliance with their summons in this case; as they would, should we receive a similar one, to attend the trials of Blannerhassett & others, in the Mississippi territory, those instituted at St. Louis and other places on the western waters, or at any place, other than the seat of government. To comply with such calls would leave the nation without an executive branch, whose agency, nevertheless, is understood to be so constantly necessary, that it is the sole branch which the constitution requires to be always in function. It could not then mean that it should be withdrawn from it's station by any co-ordinate authority.



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“With respect to papers, there is certainly a public & a private side to our offices. To the former belong grants of land, patents for inventions, certain commissions, proclamations, & other papers patent in their nature. To the other belong mere executive proceedings. All nations have found it necessary, that for the advantageous conduct of their affairs, some of these proceedings, at least, should remain known to their executive functionary only. He, of course, from the nature of the case, must be the sole judge of which of them the public interests will permit publication. Hence, under our Constitution, in requests of papers, from the legislative to the executive branch, an exception is carefully expressed, as to those which he may deem the public welfare may require not to be disclosed: as you will see in the enclosed resolution of the H of Representatives, which produced the message of Jan 22, respecting this case. The respect mutually due between the constituted authorities, in their official intercourse, as well as sincere dispositions to do for every one what is just, will always insure from the executive, in exercising the duty of discrimination confided to him, the same candor & integrity to which the nation has in like manner trusted in the disposal of it's judiciary authorities. Considering you as the organ for communicating these sentiments to the Court, I address them to you for that purpose, & salute you with esteem & respect.”

“ Washington, June 19, 07.

“ Dear Sir,—Yours of the 17th was received last night. Three blank pardons had been (as I expect) made up & forwarded by the mail of yesterday, and I have desired 3. others to go by that of this evening. You ask what is to be done if Bollman finally rejects his pardon, & the Judge decides it to have no effect? Move to commit him immediately for treason or misdemeanor, as you think the evidence will support; let the Court decide where he shall be sent for trial; and on application, I will have the marshall aided in his transportation, with the executive means. And we think it proper, further, that when Burr shall have been convicted of either treason or misdemeanor, you should immediately have committed all those persons against whom you should find evidence sufficient, whose agency has been



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so prominent as to mark them as proper objects of punishment, & especially where their boldness has betrayed an inveteracy of criminal disposition. As to obscure offenders & repenting ones, let them lie for consideration.

"I enclose you the copy of a letter received last night, and giving singular information. I have inquired into the character of Graybell. He was an old revolutionary captain, is now a flour merchant in Baltimore, of the most respectable character, & whose word would be taken as implicitly as any man's for whatever he affirms. The letter writer, also, is a man of entire respectability. I am well informed, that for more than a twelvemonth it has been believed in Baltimore, generally, that Burr was engaged in some criminal enterprise, & that Luther Martin knew all about it. We think you should immediately despatch a subpoena for Graybell; & while that is on the road, you will have time to consider in what form you will use his testimony; e.g. shall L M be summoned as a witness against Burr, & Graybell held ready to confront him? It may be doubted whether we could examine a witness to discredit our own witness. Besides, the lawyers say that they are privileged from being forced to breaches of confidence, and that no others are. Shall we move to commit L M, as *particeps criminis* with Burr? Graybell will fix upon him misprision of treason at least. And at any rate, his evidence will put down this unprincipled & impudent federal bull-dog, and add another proof that the most clamorous defenders of Burr are all his accomplices. It will explain why L M flew so hastily to the aid of his 'honorable friend,' abandoning his clients & their property during a session of a principal court in Maryland, now filled, as I am told. with the clamors & ruin of his clients. I believe we shall send on Latrobe as a witness. He will prove that A B endeavored to get him to engage several thousand men, chiefly Irish emigrants, whom he had been in the habit of employing in the works he directs, under pretence of a canal opposite Louisville, or of the Washita, in which, had he succeeded, he could with that force alone have carried everything before him, and would not have been where he now is. He knows, too, of certain meetings of Burr, Bellman, Yrujo, & one other whom we have never named yet, but have him not the less in our view.

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"I salute you with friendship & respect.

"P. S. Will you send us half a dozen blank subpoenas?

"Since writing the within I have had a conversation with Latrobe. He says it was 500. men he was desired to engage. The pretexts were, to work on the Ohio canal, & be paid in Washita lands. Your witnesses will some of them prove that Burr had no interest in the Ohio canal, & that consequently this was a mere pretext to egret the real object from the men themselves, and all others. Latrobe will set out in the stage of to-morrow evening, & be with you Monday evening."

" Washington, June 20, 1807.

" Dear Sir,—Mr. Latrobe now comes on as a witness against Burr. His presence here is with great inconvenience dispensed with, as 150 workmen require his constant directions on various public works of pressing importance. I hope you will permit him to come away as soon as possible. How far his testimony will be important as to the prisoner, I know not; but I am desirous that those meetings of Yrujo with Burr and his principal accomplices, should come fully out, and judicially, as they will establish the just complaints we have against his nation.

"I did not see till last night the opinion of the Judge on the *subpoena duces tecum* against the President. Considering the question there as *coram non judice*, I did not read his argument with much attention. Yet I saw readily enough, that, as is usual where an opinion is to be supported, right or wrong, he dwells much on smaller objections, and passes over those which are solid. Laying down the position generally, that all persons owe obedience to subpoenas, he admits no exception unless it can be produced in his law books. But if the Constitution enjoins on a particular officer to be always engaged in a particular set of duties imposed on him, does not this supersede the general law, subjecting him to minor duties inconsistent with these? The Constitution enjoins his constant agency in

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the concerns of 6. millions of people. Is the law paramount to this, which calls on him on behalf of a single one? Let us apply the Judge's own doctrine to the case of himself & his brethren. The sheriff of Henrico summons him from the bench, to quell a riot somewhere in his county. The federal judge is, by the general law, a part of the *posse* of the State sheriff. Would the Judge abandon major duties to perform lesser ones? Again; the court of Orleans or Maine commands, by *subpœnas*, the attendance of all the judges of the Supreme Court. Would they abandon their posts as judges, and the interests of millions committed to them, to serve the purposes of a single individual? The leading principle of our Constitution is the independence of the Legislature, executive and judiciary of each other, and none are more jealous of this than the judiciary. But would the executive be independent of the judiciary, if he were subject to the *commands* of the latter, & to imprisonment for disobedience; if the several courts could bandy him from pillar to post, keep him constantly trudging from north to south & east to west, and withdraw him entirely from his constitutional duties? The intention of the Constitution, that each branch should be independent of the others, is further manifested by the means it has furnished to each, to protect itself from enterprises of force attempted on them by the others, and to none has it given more effectual or diversified means than to the executive, Again; because ministers can go into a court in London as witnesses, without interruption to their executive duties, it is inferred that they would go to a court 1000. or 1500. miles off, and that ours are to be dragged from Maine to Orleans by every criminal who will swear that their testimony 'may be of use to him.' The Judge says, '*it is apparent* that the President's duties as chief magistrate do not demand his whole time, & are not unremitting.' If he alludes to our annual retirement from the seat of government, during the sickly season, he should be told that such arrangements are made for carrying on the public business, at and between the several stations we take, that it goes on as unremittingly there, as if we were at the seat of government. I pass more hours in public business at Monticello than I do here, every day; and it is much more laborious, because all must be done in writing. Our stations being known, all communications come to them regularly, as to fixed points. It would be very different were we always on the road, or placed in the noisy & crowded taverns where

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courts are held. Mr. Rodney is expected here every hour, having been kept away by a sick child.

"I salute you with friendship and respect."

" Washington, June 23, 1807.

" Dear Sir,—In mine of the 12th I informed you I would write to the Atty General to send on the letter of General Wilkinson of Oct. 21, referred to in my message of Jan'y 22. He accordingly sent me a letter of that date, but I immediately saw that it was not the one desired, because it had no relation to the facts stated under that reference. I immediately, by letter, apprized him of this circumstance, and being since returned to this place, he yesterday called on me with the whole of the papers remaining in his possession, & he assured me he had examined carefully the whole of them, and that the one referred to in the message was not among them, nor did he know where it would be found. These papers have been recurred to so often, on so many occasions, and some of them delivered out for particular purposes, that we find several missing, without being able to recollect what has been done with them. Some of them were delivered to the Attorney of this district, to be used on the occasions which arose in the District Court, & a part of them were filed, as is said, in their office. The Atty General will examine their office to day, and has written to the District Attorney to know whether he retained any of them. No researches shall be spared to recover this letter, & if recovered, it shall immediately be sent on to you. Compiling the message from a great mass of papers, and pressed in time, the date of a particular paper may have been mistaken, but we all perfectly remember the one referred to in the message, & that its substance is there correctly stated. Genl Wilkinson probably has Copies of all the letters he wrote me, & having expressed a willingness to furnish the one desired by the Court, the defendant can still have the benefit of it. Or should he not have the particular one on which that passage in the message is founded, I trust that his memory would enable him to affirm that it is substantially correct. I salute you with friendship & respect."

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“ Monticello, Aug. 7, 07.

“ Dear Sir,—I inclose you a letter received yesterday on the subject of Genl. Presley Nevil. With respect to both him & his son I believe there is no doubt of a participation in Burr's designs but I suppose that after the issue of the principal trial will be the proper time to decide what subordinate offenders may be laid hold of.

I learn by the newspapers that I am to have another *subpoena duces tecum* for Eaton's declaration. With respect to my personal attendance higher duties keep me here. During the present & ensuing months I am here to avoid the diseases of tide water situations and all communications on the business of my office, by arrangements which have been taken, will be daily received and transacted here. With respect to the paper in question it was delivered to the Attorney Genl with all the other papers relating to Burr. I have therefore neither that nor any of the others in my possession. Possibly the Arty Genl may have delivered it to you. If not, he has it, & he is the person to whom a subpoena to bring that or any others into court, may be at once addressed. I salute you with friendship & respect.”

The most interesting of this series, however, is a mere draft of a letter to Hay, which may never have been sent, but which is of the utmost importance.

“The enclosed letter is written in a spirit of conciliation & with the desire to avoid conflicts of authority between the high branches of the govm't which would discredit it equally at home & abroad. That Burr & his counsel should wish to [struck out “divert the public attention from him to this battle of giants was to be”] convert his Trial into a contest between the judiciary & Exve Authorities was to be expected. But that the Ch. Justice should lend himself to it. and take the first step to bring it on, was not expected. Nor can it be now believed that his prudence or good sense will permit him to press it. But should he contrary to expectation, proceed to issue any process which should involve any act of force to be committed on the persons of the Exve or heads of depmts, I must desire you to give me instant notice, & by express if you find that can be quicker done than by post; and

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that moreover you will advise the marshall on his conduct, as he will be critically placed between us. His safest way will be to take no part in the exercise of any act of force ordered in this case. The powers given to the Exve by the constn are sufficient to protect the other branches from judiciary usurpation of preeminence, & every individual also from judiciary vengeance, and the marshal may be assured of it's effective exercise to cover him. I hope however that the discretion of the C. J. will suffer this question to lie over for the present, and at the ensuing session of the legislature he may have means provided for giving to individuals the benefit of the testimony of the Exve functionaries in proper cases, without breaking up the government. Will not the associate judge assume to divide his court and procure a truce at least in so critical a conjuncture.”

“ Monticello, August 20, 1807.

“ Dear Sir,—I received yesterday your favor of the 11th. An error of the post office had occasioned the delay. Before an impartial jury, Burr's conduct would convict himself, were not one word of testimony to be offered against him. But to what a state will our law be reduced by party feelings in those who administer it? Why do not Blannerhassett, Dayton, &c., demand private & comfortable lodgings? In a country where an equal application of law to every condition of man is fundamental, how could it be denied to them? How can it ever be denied to the most degraded malefactor? The enclosed letter of James Morrison, covering a copy of one from Alston to Blannerhassett, came to hand yesterday. I enclosed them, because it is proper all these papers should be in one deposit, & because you should know the case & all its bearings, that you may understand whatever turns up in the cause. Whether the opinion of the letter writer is sound, may be doubted. For, however these, & other circumstances which have come to us, may induce us to believe that the bouncing letter he published, & the insolent one he wrote to me, were intended as blinds, yet they are not sufficient for legal conviction. Blannerhassett & his wife could possibly tell us enough. I commiserate the suffering you have to go through in such a season, and salute you with great esteem and respect.”

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“ Monticello, Sep, 7, 07.

“ Dear Sir,—I received, late last night, your favor of the day before, and now re-enclose you the subpoena. As I do not believe that the district courts have a power of *commanding* the executive government to abandon superior duties & attend on them, at whatever distance, I am unwilling, by any notice of the subpoena, to set a precedent which might sanction a proceeding so preposterous. I enclose you, therefore, a letter, public & for the court, covering substantially all they ought to desire. If the papers which were enclosed in Wilkinson's letter may, in your judgment, be communicated without injury, you will be pleased to communicate them. I return you the original letter.

“I am happy in having the benefit of Mr. Madison's counsel on this occasion, he happening to be now with me. We are both strongly of opinion, that the prosecution against Burr for misdemeanor should proceed at Richmond. If defeated, it will heap coals of fire on the head of the Judge; if convicted, it will give time to see whether a prosecution for treason against him can be instituted in any, and what other court. But we incline to think, it may be best to send Blannerhasset & Smith (Israel) to Kentucky, to be tried both for the treason & misdemeanor. The trial of Dayton for misdemeanor may as well go on at Richmond.

“I salute you with great esteem & respect.”

“ Monticello, September 7, 1807.

“ Sir,—Understanding that it is thought important that a letter of Nov. 12, 1806, from General Wilkinson to myself, should be produced in evidence on the charges against Aaron Burr, depending in the District Court now sitting in Richmond, I send you a copy of it, omitting only certain passages, the nature of which is explained in the certificate subjoined to the letter. As the attorney of the United States, be pleased to submit the copy & certificate to the uses of the Court. I salute you with great esteem and respect.”



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The certificate read:

“On re-examination of a letter of Nov. 12, 1806, from Genl. Wilkinson to myself, (which having been for a considerable time out of my possession, and now returned to me,) I find in it some passages entirely confidential, given for my information in the discharge of my executive functions, and which my duties & the public interest forbid me to make public. I have therefore given above a correct copy of all those parts which I ought to permit to be made public. Whose not communicated are in nowise material for the purposes of justice on the charges of treason or misdemeanor depending against Aaron Burr; they are on subjects irrelevant to any issues which can arise out of those charges, & could contribute nothing towards his acquittal or conviction. The papers mentioned in the 1st and 3d paragraphs, as enclosed in the letters, being separated therefrom, & not in my possession, I am unable, from memory, to say what they were. I presume they are in the hands of the attorney for the U. S. Given under my hand this 7th day of September, 1807.”

Washington, May 20, 07.

Dear Sir. —Dr. Bollman, on his arrival here in custody in Jan., voluntarily offered to make communications to me, which he accordingly did, Mr. Madison, also being present. I previously & subsequently assured him, (without, however, his having requested it,) that they should never be used *against himself*. Mr. Madison on the same evening committed to writing, by memory, what he had said; & I moreover asked of Bollman to do it himself, which he did, & I now enclose it to you. The object is as he is to be a witness, that you may know how to examine him, & draw everything from him. I wish the paper to be seen & known only to yourself and the gentlemen who aid you, & to be returned to me. If he should prevaricate, I should be willing you should go so far as to ask him whether he did not say so & so to Mr. Madison & myself. In order to let him see that his prevarications will be marked, Mr. Madison will forward you a pardon for him, which we mean should be delivered previously. It is suspected by some he does not intend to appear. If he does not, I hope you will take effectual measures to have him immediately taken into custody.

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Some other blank pardons are sent on to be filled up at your discretion, if you should find a defect of evidence, & believe that this would supply it, by avoiding to give them to the gross offenders, unless it be visible that the principal will otherwise escape. I send you an affidavit of importance received last night. If General Wilkinson gets on in time, I expect he will bring Dunbaugh on with him. At any rate it may be a ground for an arrest & commitment for treason. Accept my friendly salutations, & assurances of great esteem and respect.